IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.57 OF 2003.
IN
FIRST APPEAL NO.549 OF 1997.

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Office notes, office memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

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Shri S.S.Shah i/by M/s.Humrawala & Co for the Applicants.
Ms Manorama Mohanty i/by S.K.Srivastav & Co for the Respondents.

CORAM : ABHAY S.OKA, J.
DATED : 19th December, 2007.

P.C.:

1. Rule. The learned advocate for proposed legal representatives waives service.

2. The respondent in appeal died on 29th May, 1998. The said fact was brought to the notice of the advocate on record of the appellant by the advocate of the deceased respondent by his letter dated 17th January, 2002. The present application has been filed on 07th December, 2002.

3. The opposition of the advocate for respondents is on the ground that the applicant was always aware of the death of the respondent and in any event from 17th January, 2002 there is a gross

delay in filing the present application. In view of the averments made in the application, sufficient cause is made out for setting aside abatement. Hence, the application deserves to be allowed by setting aside abatement. However, the applicant will have to pay costs quantified at Rs.5,000/-.

4. Hence, rule is made absolute in terms of prayer clauses (a) to (d) subject to the applicant paying costs of Rs.5,000/- to the respondents within a period of six weeks from today. Payment of costs will be condition precedent. Amendment to be carried out within six weeks from today.

JUDGE